Inland Empire Waterkeeper
Advocacy • Education • Restoration • Enforcement

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April 16, 2014

VIA CERTIFIED MAIL

Mission Clay Products, LLC
Attn: Ken Garrett, Operations Manager
23835 Temescal Canyon Road
Corona, California 92883

MC Industries, LLC
708 South Temescal St, Suite 101
Corona, California 92879

MCP Industries, Inc.
P.O. Box1839
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BBG KRG, Inc.
P.O. Box 2406
Corona, California 92877

CT Corporation System
Registered Agent for Mission Clay Products, LLC
818 W. Seventh Street
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CT Corporation System
Registered Agent for MC Industries, LLC
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Jack J. Barcal
Registered Agent for MCP Industries, Inc.
1301 East Road
La Habra Heights, California 90631

John J. Barcal
Registered Agent for BBG KRG, Inc.
1301 East Road
La Habra Heights, California 90631

Re: Notice of Violation and Intent to File Suit Under the Clean Water Act

To Whom It May Concern:

I am writing on behalf of Inland Empire Waterkeeper and Orange County Coastkeeper (collectively "Waterkeeper") regarding violations of the Clean Water Act[1] and California's General Industrial Storm Water Permit[2] ("GISWP") occurring at: 23835 Temescal Canyon Road ("Mission Clay Facility" or "Facility"). The purpose of this letter is to put the Owner(s) and/or Operator(s) of the Mission Clay Facility ("Mission Clay Facility Owners and/or Operators"), on notice of the violations of the GISWP occurring at the Mission Clay Facility, including, but not limited to, discharges of polluted storm water from the Mission Clay Facility into local surface waters. Violations of the GISWP are violations of the Clean Water Act. As explained below, Mission Clay Facility Owners and/or Operators are liable for violations of the GISWP and the Clean Water Act.

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[1] Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*
[2] National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. Notice must be given to the alleged violator (which shall be accomplished by certified mail addressed to, or by personal service upon, the owner or managing agent of the facility alleged to be in violation), the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution control agency in the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1). This letter is being sent to you as the responsible owner and operator of the Mission Clay Facility, or as the registered agent for this entity. This notice letter ("Notice Letter") is issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act to inform Mission Clay that Waterkeeper intends to file a federal enforcement action against Mission Clay for violations of the GISWP and the Clean Water Act sixty (60) days from the date of this Notice Letter.

I. BACKGROUND

A. Inland Empire Waterkeeper and Orange County Coastkeeper.

Inland Empire Waterkeeper's office is located at 6876 Indiana Avenue, Suite D, Riverside, California 92506. Inland Empire Waterkeeper is a chapter of Orange County Coastkeeper. Orange County Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California with its office at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626. Together, Inland Empire Waterkeeper and Orange County Coastkeeper have over 2,000 members who live and/or recreate in and around the Santa Ana River watershed. Waterkeeper is dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the Inland Empire watershed. To further these goals, Waterkeeper actively seeks federal and state agency implementation of the Clean Water Act, and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

Members of Waterkeeper use and enjoy the waters that Mission Clay discharges into, including the Santa Ana River and its tributaries. Members of Waterkeeper use and enjoy the Santa Ana River and its tributaries to picnic, hike, view wildlife, and engage in scientific study including monitoring activities. The discharge of pollutants from the Mission Clay Facility impairs each of these uses. Further, discharges of polluted storm water from the Mission Clay Facility are ongoing and continuous. Thus, the interests of Waterkeeper's members have been, are being, and will continue to be adversely affected by Mission Clay's failure to comply with the Clean Water Act and the GISWP.

B. The Owners and/or Operators of the Mission Clay Facility.

Certain classified facilities that discharge storm water associated with industrial activity are required to apply for coverage under the GISWP by submitting a Notice of Intent ("NOI") to

the State Water Resources Control Board ("State Board") to obtain GISWP coverage. *See* GISWP, Finding #3. Mission Clay first obtained GISWP coverage in November 1994. The NOI identifies the owner/operator of the Mission Clay Facility as "Mission Clay Products" and the Facility name and location as "Mission Clay Products, 23835 Temescal Canyon Road, Corona, California 92883." The SIC Code on the NOI is 3251, structural clay manufacturing. The State Board assigned the Mission Clay Facility the Waste Discharge Identification ("WDID") number 8-33I011264.

Information available to Waterkeeper indicates that Mission Clay Products, LLC is an owner and/or operator of the Mission Clay Facility. Information available to Waterkeeper indicates that Mission Clay Products, LLC is a subsidiary of MC Industries LLC, which in turn is a subsidiary of MCP Industries, Inc. Information available to Waterkeeper indicates that MCP Industries, Inc. is also an owner and/or operator of the Mission Clay Facility because MCP Industries, Inc. owns the portion of the facility on the west side of the 15 Freeway, Assessor's Parcel Numbers (APN's) 283-18-0021, 283-18-0002, and 283-18-0020. Additionally, information available to Waterkeeper indicates that BBG KRG, Inc. is an owner and/or operator of the Mission Clay Facility because BBG KRG, Inc. owns the parcels where the mining area is located, APN 283-19-0027 and 283-20-0010. Waterkeeper refers to Mission Clay Products, LLC, MC Industries LLC, MCP Industries, Inc., and BBG KRG, Inc., collectively as the "Mission Clay Facility Owners and/or Operators."

Information available to Waterkeeper indicates that Mission Clay Products, LLC is an active California limited liability company and its Registered Agent is: CT Corporation System, 818 West Seventh Street, Los Angeles, California 90017. Information available to Waterkeeper indicates that MC Industries, LLC is an active California limited liability company and its Registered agent is CT Corporation System, 818 West Seventh Street, Los Angeles, California 90017. Information available to Waterkeeper indicates that MCP Industries, Inc. is an active California corporation and its Registered Agent is Jack J. Barcal, 1301 East Road, La Habra Heights, California 90631. Information available to Waterkeeper indicates that BBG KRG, Inc. is an active California corporation and its Registered Agent is John J. Barcal, 1301 East Road, La Habra Heights, California 90631.

C. Storm Water Pollution and the Waters Receiving Mission Clay's Discharges.

With every significant rainfall event millions of gallons of polluted storm water originating from industrial operations such as the Mission Clay Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

Polluted discharges from structural clay facilities such as the Mission Clay Facility contain heavy metals (including zinc, copper, lead, aluminum and iron); total suspended solids ("TSS"); hydraulic fluids; transmission fluid; lubricating fluid; radiator fluid; antifreeze; diesel;

motor oils; waste oils; solvents; paint; petroleum hydrocarbons; acids; bases; detergents; and oil and grease ("O&G").

The Mission Clay Facility discharges into the Temescal Wash, a tributary to the Santa River (Temescal Wash and the Santa Ana River are hereinafter collectively "Receiving Waters"), which are ecologically sensitive areas. Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, these waters are still essential habitat for dozens of fish and bird species as well as macro-invertebrate and invertebrate species. Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special aesthetic and recreational significance that the Receiving Waters have for people in the surrounding communities. The public's use of local waterways exposes many people to toxic metals and other contaminants in storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving Waters.

The California Regional Water Quality Control Board, Santa Ana Region Regional Board ("Regional Board") issued the *Santa Ana River Basin Water Quality Control Plan* ("Basin Plan"). The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Intermittent Beneficial Uses for Temescal Wash include: Agricultural Supply (AGR); Industrial Service Supply (IND); Groundwater Recharge (GWR); Water Contact Recreation (REC 1); Non-contact Water Recreation (REC 2); Limited Warm Freshwater Habitat (LWRM); and Wildlife Habitat (WILD). *See* Basin Plan at Table 3-1. The Mission Clay Facility discharges polluted water into Temescal Wash, which flows into Reach 3 of the Santa Ana River. The Beneficial Uses for Reach 3 of the Santa Ana River include: Agricultural Supply (AGR), Groundwater Recharge (GWR); Water Contact Recreation (REC 1); Non-contact Water Recreation (REC 2); Warm Freshwater Habitat (WARM); Wildlife Habitat (WILD); and Rare, Threatened or Endangered Species (RARE). Reach 3 of the Santa Ana River is impaired for pollutants such as copper.[3] Polluted discharges from industrial sites, such as the Mission Clay Facility, contribute to the degradation of these already impaired surface waters and aquatic-dependent wildlife.

The Basin Plan establishes water quality standards for the Santa Ana River, and its tributaries, including Temescal Creek. It provides, "[w]aste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affects beneficial uses." Basin Plan at 4-10. The Basin Plan also prohibits the discharge of floatables, stating that "[w]aste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affects beneficial uses." Basin Plan at 4-11. The Basin Plan also prohibits dischargers from contributing discharges "contain[ing] suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses as a result of controllable water quality factors. Basin Plan at 4-16. Additionally, the Basin Plan states "inland surface

[3] 2010 Integrated Report – All Assessed Waters, *available at* http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml (last accessed on April 8, 2014).

waters of the region shall be free of changes in turbidity which adversely affect beneficial uses." Basin Plan at 4-18.

II. THE MISSION CLAY FACILITY AND ASSOCIATED DISCHARGES OF POLLUTANTS

A. The Mission Clay Facility Site Description

The Mission Clay Facility is a clay pipe manufacturer and distributor. Documents obtained from the Regional Board indicate that the Facility spans 273 acres and industrial activities occur at this location. Consistent with this information, the 1994 NOI for the Mission Clay Facility only seeks coverage for 273 acres. However, as mentioned, the facility is located on APN's 283-18-0021 (9.68 acres), 283-18-0002 (2.14 acres), 283-18-0020 (4.16 acres), 283-19-0027 (50.89 acres) and 283-20-0010 (217.02 acres). The sitemap also identifies an agricultural field at the back of the plant portion of the facility, parcel number 283-18-0001 (10.04 acres), but it is unclear if this field is part of the Facility. Collectively, these parcels (even when the agricultural field is excluded) make up more than 273 acres. The mining area alone makes up 267.9 acres, while the plant portion of the facility is 15.98 acres and the agricultural field is 10.04 acres.

The Mission Clay Facility Storm Water Prevention Pollution Plan ("SWPPP") states that approximately 0.03% of the site is impervious. The SWPPP and site map indicate that a large portion of the site is a mine that is on the opposite side of the 15 Freeway from the plant. The SWPPP and site map refer to this portion of the site as the mining area. The SWPPP states that clay is harvested from the mining area. On the portion of the Facility property on the west side of the 15 Freeway, the site map shows that there is a shop building, a main building, an office building, a parking area, clay grinding area, two pipe storage areas, an uncovered clay storage area, and a covered storage area. There are several stockpiles of clay stored uncovered outdoors.

Information available to Waterkeeper indicates that Mission Clay harvests clay from the mine and then transports the clay from the mine to the plant. The SWPPP does not describe how clay is transported from the mining area to the Mission Clay Facility. Vehicles may use the entrance to the Mission Clay Facility, from Temescal Canyon Road to Ben Garrett Road to transport clay materials to the Mission Clay Facility from the mining area. It also is not clear where Mission Clay takes the clay to be processed after it arrives from the mine. It is likely that the clay is taken to the admixture storage and processing area, which is not indicated on the site map. Next, information available to Waterkeeper indicates that, although not necessarily in this order, the clay is taken to the grinding area and the kiln firing area. Pipes are stored in the area near the entrance, and there is a parking area deeper into the facility near the office trailer and storage trailer. The Mission Clay Facility SWPPP and site map indicate that there is a sump and that waste oil is stored under cover in the shop building. The site map also shows an oil room near the shop, clay grinding area, and covered clay storage area located at the back of the site. Appendix D to the Mission Clay Facility SWPPP states that diesel, motor oils, waste oils, transmission fluid, grease, and used and new solvents are stored in the oil room.

Mission Clay's Notice of Intent is deficient because it only reflects that clay tile manufacturing occurs on site, while information in the SWPPP indicates that clay mining occurs on Mission Clay's property. The Notice of Intent is the document that a facility operator must submit for each facility that must obtain coverage under the GISWP. *See* GISWP, Section E. Facilities that must obtain a GISWP are listed in Attachment 1 of the GISWP, and include facilities with the SIC Code 3251 (brick and structural clay tile manufacturing). As discussed below, and as indicated on Mission Clay's Notice of Intent, the facility is covered by 3251 and thus must obtain coverage under the GISWP.

Facility operators that began operating before March 30, 1992 must have submitted a Notice of Intent form and a site map by March 30, 1992, while facilities beginning operation after that date must submit a Notice of Intent no later than 14 days before beginning operation. . The Notice of Intent form has a "Facility Site Information" section, where the facility owner or operator must indicate the SIC Code that best indicates the industrial activity occurring at the site. Based on the activities that occur on site, a facility may need to list more than one code. Facilities that change their site map or industrial activity after filing a Notice of Intent must file a new Notice of Intent with the Regional Board.

The SIC Codes that apply to the Mission Clay Facility are 1459 (clay, ceramic and refractory materials mining) and 3251 (brick and structural clay tile manufacturing). According to the 1995 Multi-Sector General Permit ("MSGP") Fact Sheet, SIC Code 3251 includes the following industrial activities: crushing and grinding raw materials, screening ground material to ensure the particles are the right size, adding water to the raw materials in mixing chambers, shaping the clay with hydraulic machines or pressure, drying the clay, and firing the clay in kilns. Activities included in SIC Code 1459 are extracting minerals and the steps to produce a salable product. *See* EPA Storm Water Multi-Sector Permit, 65 Fed. Reg. 64839 (2000).

The Standard Industrial Classification ("SIC") Code on the NOI is 3251 (brick and structural clay tile manufacturing). As described below, Mission Clay mixes clay with admixture, dries the clay, shapes the clay, and fires the clay in a kiln. Shaping, blending, firing, and storing clay are part of the clay tile manufacturing process described in the 1995 MSGP Fact Sheet, which supports the Facility's decision to select SIC Code 3251. However, the SWPPP also indicates that the facility's industrial activity includes clay mining because the SWPPP mentions that clay is harvested from a mine at the facility. The SIC Code for clay mining is 1459 (clay, ceramic, and refractory materials mining). Accordingly, because both mining and manufacturing activities take place on site, Waterkeeper puts Mission Clay on notice that it also must obtain coverage under SIC Code 1459 (clay, ceramic and refractory materials mining) and is currently in violation of the GISWP by failing to file an updated Notice of Intent.

B. Mission Clay's Industrial Activities and Associated Pollutants.

According to Section 3 of the SWPPP, the industrial activities that occur at the Mission Clay Facility involve mining clay, transporting mined clay to the facility, processing clay from the mine, blending the clay with admixture, shaping the clay, drying the clay, and firing the clay in a kiln. The 2012-2013 Annual Comprehensive Site Compliance Evaluation ("ACSCE") also

adds steam cleaning and high pressure washing. Mission Clay must obtain GISWP coverage for all such operations. All of the activities except for mining fall under SIC Code 3251.

Pollutants identified in the SWPPP include: sediment, admixture, petroleum hydrocarbons, sulfuric acid, lead, oil and grease, anti-freeze, solvents, paints, acids, bases, metals, and soaps. Information available to Waterkeeper indicates that iron is an additional pollutant associated with clay manufacturing facilities.

Information available to Waterkeeper, including observations of staining on the ground in uncovered portions of the site, indicates that fueling, storage and maintenance of vehicles and equipment and storage of clay stockpiles occur at the Mission Clay Facility without adequate cover to prevent storm water and non-storm water exposure to pollutant sources. Information available to Waterkeeper, including observations of erosion near the mining area, indicates that the Mission Clay Facility does not have effective BMPs or secondary containment to prevent polluted storm water and non-storm water from discharging from the mining area. The resulting illegal discharges of polluted water impact Waterkeeper's members' use and enjoyment of the Receiving Waters by increasing the quantity of pollutants in the Receiving Waters and by posing risks to human health and aquatic life.

C. Mission Clay Facility Storm Water Flow and Discharge Locations.

Storm water polluted by the Mission Clay Facility's industrial operations is discharged to the Receiving Water via discharge points located throughout the Facility. The site map in the Mission Clay Facility SWPPP identifies 3 storm water discharge points: one in the portion of the Mission Clay Facility where the plant is located and two in the mining area. The site map depicts the location of discharge point #1 with an arrow that simply points to an opening at Temescal Canyon Road. Discharge point #1 appears to be near the entrance to the plant at Ben Garrett Road and Temescal Canyon Road. Information available to Waterkeeper indicates that storm water sheet flows from discharge point #1 down Ben Garrett Road and north on Temescal Canyon Road until it enters a municipal storm drain inlet at approximately 23780 Temescal Canyon Road. Waterkeeper is informed and believes that the storm drain inlet connects to a storm drain that travels north and joins with the Temescal Creek.

Information available to Waterkeeper indicates there is at least one other, unidentified discharge point in the plant portion of the Mission Clay Facility. An unidentified discharge point located on the northwestern corner of the Mission Clay Facility drains storm water from an area adjacent to the storage area and the office building. Additionally, there is a road within the facility boundaries, and it appears that storm water may flow along that road and discharge in the southeastern corner of the facility near the buildings labeled "shop," "clay grinding area," and "covered clay storage," as referenced in the site map. Information available to Waterkeeper indicates that the Mission Clay Facility Owners and/or Operators have not identified either location as a discharge point from the Mission Clay Facility, and have not sampled these discharge points.

The Mission Clay Facility Owners and/or Operators identify a second discharge point,

"discharge point #2." Discharge point #2 is located in the northwestern portion of the mining area. Waterkeeper is informed and believes that storm water enters a ditch near discharge point #2 and travels east until the ditch empties onto Canta Rosa Road, which then discharges into Temescal Creek. Mission Clay Facility Owners and/or Operators do not collect regular storm water samples from this discharge point.

The Mission Clay Facility Owners and/or Operators identify a third discharge point, "discharge point #3," which discharges down a vegetated hillside and directly into Temescal Creek. Discharge point #3 is located in the northeast corner of the mining area, near the portion of the railroad track that is across from the intersection of Dawson Canyon Road and Park Canyon Road. Mission Clay Facility Owners and/or Operators do not collect storm water samples from this discharge point.

The Mission Clay Facility Owners and/or Operators have not properly developed and/or implemented the required BMPs to address pollutant sources, to prevent the exposure of pollutants to storm water, and to prevent the subsequent discharge of polluted storm water from the Mission Clay Facility during rain events. Consequently, during rain events, storm water carries pollutants from the Mission Clay Facility's uncovered operations areas, uncovered piles, contaminated ground and floors, equipment, staging areas, sorting areas, loading and unloading areas, parking lots, and other sources into the storm sewer system on and adjacent to the Mission Clay Facility, which flows into the Receiving Waters.

III. VIOLATIONS OF THE CLEAN WATER ACT AND THE GISWP

A. Discharges of Pollutants Not in Compliance with an NPDES Permit in Violation of Section 301(a) of the Clean Water Act.

The Clean Water Act requires that any person discharging pollutants to a water of the United States from a point source[4] obtain coverage under an NPDES permit. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1). The GISWP is an NPDES permit which regulates storm water discharges associated with certain industrial activities. Industrial activities conducted at the Mission Clay Facility on the west side of the 15 Freeway fall under SIC Code 3251, while activities conducted at the Mission Clay Facility on the east side of the 15 Freeway fall under SIC Code 1459. However, Mission Clay has NOI permit coverage for the entire facility under SIC Code 3251.

Every day Mission Clay discharges pollutants not in compliance with an NPDES permit is a separate and distinct violation of the Clean Water Act. Mission Clay has been and continues to be in daily violation of the requirement to obtain and comply with a Clean Water Act NPDES

[4] A point source is defined as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. 33 U.S.C. § 1362(14); *see* 40 C.F.R. § 122.2

permit every day since beginning operations. Mission Clay is subject to civil penalties for all violations of the Clean Water Act occurring since April 16, 2009.

B. Discharges of Polluted Storm Water from the Mission Clay Facility in Violation of Effluent Limitation B(3) of the GISWP.

Effluent Limitation B(3) of the GISWP requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve best available technology economically achievable ("BAT") for toxic pollutants[5] and best conventional pollutant control technology ("BCT") for conventional pollutants.[6] EPA Benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation B(3) of the GISWP.[7]

Storm water sampling at the Mission Clay Facility demonstrates that storm water discharges from the Facility consistently contain concentrations of pollutants above the EPA Benchmarks. For example, the EPA Benchmark for aluminum is 0.75 mg/l. A storm water sample from the Facility taken in April 2010 shows an exceedance of this benchmark limit by 75 times the daily maximum effluent limit for aluminum, samples taken in March 2011 show an exceedance of this benchmark limit by 99 times at discharge point #1 and by 38 times at discharge point #2, a sample taken in December 2011 shows an exceedance of this limit by 63 times at discharge point #1, and a sample taken in December 2012 shows an exceedance of this limit by 224 times at discharge point #1. Additionally, the samples show exceedances for total suspended solids ("TSS"), which has a benchmark of 100 mg/L. For example, a sample in April 2010 shows an exceedance of this limit by 29.3 times, a sample in March 2011 shows an exceedance by 17 times at discharge point #1 and 9.5 times at discharge point #2, a sample in December 2011 shows an exceedance by 17 times at discharge point #1, and a sample taken in December 2012 shows an exceedance by 43.4 times at discharge point #1. Mission Clay Facility Owners and/or Operators received a parameter benchmark exceedance letter from the Regional Board for benchmark exceedances of TSS on June 6, 2013. Mission Clay included additional information in their ACSCE in response to the letter and assured the Regional Board in their 2012-2013 Annual Report that it would implement BMPs to address these exceedances immediately.

Storm water samples taken from the Facility by Waterkeeper on March 1, 2014 and April 1, 2014, however, show further exceedances of the EPA Benchmark level for TSS by 11 times the daily maximum effluent limit and1.5 times the daily maximum effluent limit, respectively.

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[5] Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead and zinc, among others.
[6] Conventional pollutants are listed at 40 C.F.R. § 401.16 and include biochemical oxygen demand, TSS, oil and grease, pH, and fecal coliform.
[7] *See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) Authorization to Discharge Under the National Pollutant Discharge Elimination System*, as modified effective February 26, 2009 ("Multi-Sector Permit"), Fact Sheet, p.106; *see also*, 65 Fed. Reg. 64839 (2000).

The samples also show exceedances of the EPA Benchmark levels for heavy metals during wet weather. The exceedances of EPA Benchmark levels recorded thus far include aluminum by a magnitude of 223 and 11.87, iron by a magnitude of 210 and 10, and zinc by a magnitude of 8 and 2.65. The repeated and significant exceedances of EPA Benchmarks demonstrate that Mission Clay has failed to develop and/or implement required BMPs at the Facility that achieve compliance with the BAT/BCT standards.

Waterkeeper puts Mission Clay on notice that Mission Clay violates Effluent Limitation B(3) of the GISWP every time Mission Clay discharges storm water from the Mission Clay Facility without BMPs that achieve BAT/BCT, resulting in exceedances of EPA benchmark limits. *See, e.g.*, Exhibit A. These discharge violations are ongoing and will continue every time Mission Clay discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Waterkeeper will update the dates of violations when additional information and data become available. Each time Mission Clay discharges polluted storm water in violation of Effluent Limitation B(3) of the GISWP is a separate and distinct violation of the GISWP and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Mission Clay Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since April 16, 2009.

C. Discharges of Polluted Storm Water from the Mission Clay Facility Violation of Receiving Water Limitations C(1) and C(2) of the GISWP.

Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. Discharges that contain pollutants, in concentrations that exceed levels known to adversely impact aquatic species and the environment, constitute violations of Receiving Water Limitation C(1) of the Storm Water Permit and the Clean Water Act. Receiving Water Limitation C(2) of the Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable WQS.[8] Discharges that contain pollutants in excess of an applicable WQS violate Receiving Water Limitation C(2) of the Storm Water Permit and the Clean Water Act.

Available data demonstrates the storm water discharges from the Mission Clay Facility contain elevated concentrations of pollutants such as copper, which can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. Storm water sampling at the Mission Clay Facility also demonstrates that discharges contain concentrations of pollutants that cause or contribute to a violation of an applicable WQS. For example, the Criteria for Priority Toxic Pollutants in the State of California ("CTR")[9] WQS for copper is 0.013

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[8] Water Quality Standards include pollutant concentration levels determined by the State Water Resources Control Board and the EPA to be protective of the Beneficial Uses of the receiving waters. Discharges above Water Quality Standards contribute to the impairment of the receiving waters' Beneficial Uses. Applicable Water Quality Standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR"). The Basin Plan also sets out additional WQS.

[9] Applicable Water Quality Standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38.

mg/L,[10] and a sample of the storm water discharge from the Mission Clay Facility on March 1, 2014 contained copper at a concentration of 0.21 mg/L, 16.15 times the WQS. The CTR WQS for zinc is 0.120 mg/L[11], and a sample taken at the Mission Clay Facility on March 1, 2014 contained a concentration of 0.97 mg/L, 8.08 times the WQS; and a sample taken on April 1, 2014 contained a concentration of 0.31 mg/L, 2.58 times the WQS.

Additionally, Mission Clay's Annual Reports demonstrate that storm water discharges from the Mission Clay Facility violate the Basin Plan's Water Quality Standards prohibiting discharges of floatable materials, settleable or suspended solids, or discolored water. *See* Exhibit A.

Information available to Coastkeeper indicates that the storm water discharges from the Mission Clay Facility violate Receiving Water Limitations C(1) and/or C(2) during and/or following every significant rain event. *See* Exhibit A. Mission Clay Facility Owners' and/or Operators' GISWP discharge violations are ongoing and will continue each time contaminated storm water is discharged in violation of the Receiving Water Limitations of the Storm Water Permit. Coastkeeper will update the number and dates of violation when additional information becomes available. Each time discharges of storm water from the Mission Clay Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitation C(1) of the GISWP and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). Each time discharges of storm water from the Mission Clay Facility cause or contribute to a violation of an applicable WQS is a separate and distinct violation of Receiving Water Limitation C(2) of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Mission Clay Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since April 16, 2009.

D. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan.

Section A(1) and Provision E(2) of the GISWP require dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets meets all of the requirements of the GISWP. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Mission Clay Facility, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. GISWP, Section A(2). These BMPs must achieve compliance with BAT/BCT standards. To ensure compliance with the GISWP, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9). The SWPPP must also be revised as necessary to ensure compliance with the GISWP. *Id.*, Sections A(9) and A(10).

Sections A(3) – A(10) of the GISWP set forth the requirements for a SWPPP. Among other things, the SWPPP must include: a site map showing the facility boundaries, storm water

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[10] WQS for certain pollutants, including copper and zinc, are hardness dependent. *See* 40 C.F.R. § 131.38.
[11] *See id.*

drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system(s), structural control measures, areas of actual and potential pollutant contact, and areas of industrial activity (*see* Section A(4)); a list of significant materials handled and stored at the site (*see* Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities; a description of significant spills and leaks; a list of all non-storm water discharges and their sources; and a description of locations where soil erosion may occur (*see* Section A(6)). Sections A(7) and A(8) require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

Information available to Waterkeeper indicates that the Mission Clay Facility Owners and/or Operators have been conducting and continue to conduct operations at the Mission Clay Facility with an inadequately developed, implemented, and/or revised SWPPP. First, the SWPPP for the Facility fails to include an adequate site map. Second, the SWPPP does not describe potential pollutant sources in the manner that Section A(6) of the GISWP requires. Third, the SWPPP's discussion of the Facility's BMPs does not meet the requirements of Section A(8) of the GISWP. Fourth, the SWPPP was not updated when new areas of industrial activity commenced on site.

1. The Mission Clay Facility site map does not comply with GISWP Section A(4)

Section A(4)(a) of the GISWP requires a discharger's site map to include facility boundaries, the outline of all storm water drainage areas within the facility boundaries, portions of the drainage areas impacted by run-on from surrounding areas, and the direction of flow of each drainage area, as well as onsite surface water bodies and areas of soil erosion. The site map must also include: the location of the storm water collection and conveyance system, associated points of discharge, the direction of flow, and any structural control measures (such as catch basins, berms, detention ponds, secondary containment, oil/water separators, and diversion barriers) that affect storm water discharges, authorized non-storm water discharges, and run-on; all impervious area of the facility, including paved areas, buildings, covered storage areas, or other roofed structures; locations where materials are directly exposed to precipitation; all areas of industrial activity, which includes: the locations of all storage areas and storage tanks, shipping and receiving areas, fueling areas, vehicle and equipment storage/maintenance areas, material handling and processing areas, waste treatment and disposal areas, dust or particulate generating areas, cleaning and rinsing areas, and other areas of industrial activity which are potential pollutant sources. Section A(4)(b-e).

The current SWPPP for the Mission Clay Facility fails to include an adequate site map. The current site map included in the Mission Clay Facility SWPPP does not identify the Facility's drainage area; portions of the drainage areas impacted by run-on from surrounding areas; the direction of water flow in each drainage area; areas of soil erosion; nearby water bodies; all of the discharge points; or municipal storm drain inlets in violation of Section A(4) of the GISWP.

Additionally, Mission Clay Facility's site map fails to identify the location of the storm water collection and conveyance system or structural control measures that affect storm water discharges, associated points of discharge and direction of flow. Structural control measures include catch basins, berms, detention ponds, secondary containment, oil/water separators, and diversion barriers. Section A(4)(b). The Mission Clay Facility site map shows that the Facility has a sump pump, but does not indicate the direction of flow into or out of the sump or the associated point of discharge. Additionally, the 2012-2013 ACSCE report in the 2012-2013 Annual Report identified retaining ponds near the clay stockpiles, in the processing area, and in the hillside mining area. These structural control measures are not depicted in the site map, in violation of Section A(4)(b) of the GISWP.

Sections A(4)(c-d) of the GISWP requires Mission's site map to outline all impervious areas, including paved areas, buildings, covered storage areas, or other roofed structures, as well as the locations where materials are directly exposed to precipitation and areas where significant spills or leaks have occurred. The site map included in Mission Clay Facility's SWPPP identifies areas of paved and unpaved vehicle/equipment storage without identifying the location on the site map. According to information available to Waterkeeper, the Mission Clay Facility houses multiple uncovered clay stockpiles that are exposed to precipitation and are unidentified on the site map. The continued failure to identify these locations is a violation of Section A(4)(c-d) of the GISWP.

Finally, Mission Clay has not identified all areas of industrial activity on its site map. *See* GISWP A(4)(a). For example, Mission Clay's 2012-2013 ACSCE and the SWPPP indicates that there is a steam cleaning and high pressure wash area. The site map, however, does not show where that area of the site is located. Further, Section 3 of the SWPPP mentions that clay is fired in a kiln, but the kilns are not depicted anywhere on the site map and the SWPPP does not mention whether the kilns are stored inside one of the buildings depicted on the map. Section 5 of the SWPPP indicates that there are two vehicle/equipment storage areas, but these areas are not depicted on the site map. Section 7 of the SWPPP mentions that there is an aggregate loading/unloading area and vehicle access roads, but these areas are not depicted on the site map. Additionally, because Mission Clay is covered under SIC Code 3251, the Multi-Sector General Permit requires it to show the location of bag houses or other dust control devices, clarifiers, or other devices used for treatment of process wastewater. This information is missing from Mission Clay's site map.

Every day the Mission Clay Facility Owners and/or Operators operate the Mission Facility with an inadequately developed, implemented, and/or revised SWPPP is a separate and distinct violation of the GISWP and the Clean Water Act. The Mission Clay Facility Owners and/or Operators have been in daily and continuous violation of the GISWP's SWPPP requirements since at least April 16, 2009. These violations are ongoing, and Waterkeeper will include additional violations when additional information and data become available. The Mission Clay Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since April 16, 2009.

2. The Facility's List of Significant Materials Does Not Meet the Requirements of GISWP Section A(5)

Section A(5) of the GISWP requires Mission Clay Facility's SWPPP to include a list of significant materials handled and stored. For each material on the list, the SWPPP must describe the locations where the material is being stored, received, shipped, and handled, as well as the typical quantities and frequency. Materials should include "raw materials, intermediate products, final or finished products, recycled materials, and waste or disposed materials." Section A(5).

The SWPPP includes a table in Appendix D that serves as the facility's list of significant materials. The table includes information about the location of those materials, the typical quantity, and the frequency. The table lists the following as significant materials: clay material, diesel, waste oils, motor oils, transmission fluid, grease, solvents, and antifreeze. The table describes the quantity and the frequency in terms of the monthly average. However, the list does not state how often the facility uses those materials or whether the location column of the table refers to the area where the materials are shipped, received or handled. For example, one of the materials listed in the table is "clay materials". The amount column is "10,000 tons" and the frequency is described in terms of the monthly average. The location is the "south side of property near grinder area." While clay is an example of a raw material that the GISWP envisioned and it is appropriate to describe the amount and frequency in terms of the monthly average, the list of significant materials must state where clay is shipped, received or handled to satisfy GISWP Section A(5) . Information available to Waterkeeper indicates that clay is handled in the middle of the site, where it appears that there are firing kilns. The SWPPP states that clay is packaged for delivery off site, which suggests that there is a shipping area for clay.

3. The Facility's Description and Assessment of Potential Pollutant Sources Does Not Meet the Requirements of GISWP Section A(6)

The current SWPPP for the Mission Clay Facility fails to include an adequate description of potential pollutant sources. The Mission Clay Facility SWPPP must include a narrative description of the facility's industrial activities[12], associated potential pollutant sources, and potential pollutants that could be discharged in storm water discharges or authorized non-storm water discharges. Section A(6)(a). For a SWPPP to adequately describe a facility's industrial activities, the SWPPP must describe all industrial processes, the characteristics, frequency, and quantity of significant materials used in or produced by the processes, and the activities related to the processes. Section A(6)(a)(ii). The Mission Clay Facility SWPPP does not describe or list any of the industrial processes that occur at the Facility. The SWPPP also does not include any of the additional information related to these processes required by the GISWP.

Section A(6)(a)(ii) of the GISWP requires a facility's SWPPP to include a description of

[12] Areas of industrial activity include the location of all storage areas and storage tanks, shipping and receiving areas, fueling areas, vehicle and equipment storage/maintenance areas, material handling and processing areas, waste treatment and disposal areas, dust or particulate generating areas, cleaning and rinsing areas, and other areas of industrial activity which are potential pollutant sources. Section A(4)(e).

each material handling and storage area at the facility. The SWPPP must "describe each handling and storage area" and the "type, characteristics, and quantity of significant materials handled or stored" in these areas. The SWPPP must also "[describe] the shipping, receiving, and loading procedures, and the spill or leak prevention and response procedures." GISWP Section A(6)(a)(ii). The Mission Clay Facility SWPPP identifies various storage areas: the admixture storage and processing area, the hazardous material storage area, the hazardous waste storage area, the paved vehicle/equipment area, the unpaved vehicle/equipment area, and the boneyard/surplus equipment storage. However, the SWPPP fails to describe these storage areas or the type, characteristics, and quantity of significant materials stored in these areas. Additionally, the SWPPP identifies a processing area, which likely would be considered a handling area. Again, however, the SWPPP does not describe this area or the type, characteristics, and quantity of significant materials handled in the processing area.

Section A(6)(a)(iii) of the GISWP requires a facility's SWPPP to describe "all industrial activities that generate dust or particulates that may be deposited within the facility's boundaries and identify their discharge locations." When describing dust or particulate-generating activities, the SWPPP must also state the characteristics of the dust and particulate pollutants, the amount of dust or particulate pollutants that may be deposited within the facility, and the primary areas where dust and particulates would settle. Mission Clay Facility's SWPPP does not identify which industrial activities would generate dust or particulates, the characteristics of the dust or what pollutants are found in the particulate matter, the amount of dust generated, or where dust and particulates would settle. Instead, the Mission Clay SWPPP describes the source, pollutant, and best management practices, without the required description of the associated industrial activities that generate dust or particulates. The failure of the Mission Clay Facility SWPPP to comply with the requirements of Section A(6)(a)(iii) is a violation of the GISWP.

Section A(6)(a)(v) of the GISWP requires a facility SWPPP to identify all non-storm water discharges and their sources. The Mission Clay Facility SWPPP does not include dust suppression as a source of non-storm water discharge. This is a violation of the GISWP.

Section A(6)(a)(vi) of the GISWP requires Mission Clay to describe locations where soil erosion may occur as a result of industrial activity, storm water discharges associated with industrial activity, or authorized non-storm water discharges. The current SWPPP for the Mission Clay Facility identifies sedimentation and erosion control practices without providing detail on where erosion may occur, or what practices are put in place to prevent non-storm water discharges after wind erosion control practices are initiated.

Furthermore, the Mission Clay SWPPP does not include the Assessment of Potential Pollutant Sources section that Section A(7) of the GISWP requires. In that section, a facility must identify likely sources of pollutants and which pollutants are likely to be present in storm water discharges. In determining which pollutants are likely to be present in storm water, the facility must consider "quantities of significant materials handled, produced, stored, or disposed of; likelihood of exposure to storm water or authorized non-storm water discharges; history of spill or leaks; and run-on from outside sources." The SWPPP does not include a consideration of these factors, which is a violation of the GISWP.

The failure of the Mission Clay Facility SWPPP to comply with the requirements of Section A(6) and A(7) is a violation of the GISWP.

4. The Narrative Description of Mission Clay's BMPs Is Inadequate

Section A(8) of the GISWP requires a facility's SWPPP to include a narrative description of the BMPs to be implemented at the facility for each of its pollutant sources. There are two types of BMPs discussed in Section A(8): nonstructural and structural BMPs. Nonstructural BMPs are described as "processes, prohibitions, procedures, schedule of activities" which prevent pollutants associated with industrial activity from contacting with storm water discharges and authorized nonstormwater discharges. They are considered low technology, cost-effective measures." Section A(8) instructs facility operators to consider all possible non-structural BMPs options before considering structural BMPs.

The majority of Mission Clay Facility's BMPs are nonstructural and are described in Section 5 through Section 12 of the SWPPP. Section 5 describes the BMPs for each of the identified potential pollutant sources on the site. However, several of these descriptions in Section 5 are too vague or they do not actually describe BMPs. Additionally, the descriptions of the nonstructural BMPs in Section 6 through Section 12 do not include the elements that GISWP Section A(8)(a) requires.

Additionally, the description of good housekeeping BMPs is inadequate because it does not incorporate the Multi-Sector General Permit (MSGP)'s required good housekeeping BMPs for clay manufacturing facilities. *See* MSGP Section 6.E.3.2. Additionally, the SWPPP does not indicate whether the facility follows MSGP Section 6.J.6's requirements for quarterly visual inspections.

5. Mission Clay Did Not Adequately Revise the SWPPP

Section A(10)(c) of the GISWP requires revisions to a facility's SWPPP prior to any changes which will cause a new area of industrial activity at the facility to be exposed to storm water. In addition, given that the SWPPP language regarding the storage tanks and the kilns is not consistent with the site map, as described above, Mission Clay's failure to update the site map to reflect that there is a storage tank and failure to update both the SWPPP and site map to indicate that there are kilns at the Facility is also a violation of Section A(10)(c) of the GISWP.

Mission Clay has failed and continues to fail to revise its SWPPP as necessary, as required by Section A(9) and A(10), to ensure that the SWPPP contains adequate BMPs to prevent the exposure of pollutant sources to storm water and the subsequent discharge of polluted storm water from the Mission Clay Facility. Waterkeeper's review of Regional Board documents indicates that Mission Clay's most recent SWPPP submitted to the Regional Board is not dated. However, since at least April 16, 2009, polluted storm water has discharged from the Mission Clay Facility on dozens of occasions, evidencing that Mission Clay has inadequately developed and/or implemented BMPs at the Facility. *See* Exhibit A. Mission Clay's annual site

inspections and storm water sampling have put Mission Clay on notice that existing BMPs established under the current SWPPP have failed to prevent storm water exposure to pollutants and that Mission Clay must revise its SWPPP.

Every day Mission Clay operates the Mission Clay Facility with an inadequately developed, implemented, and/or revised SWPPP is a separate and distinct violation of the GISWP and the Clean Water Act. Mission Clay has been in daily and continuous violation of the GISWP's SWPPP requirements. These violations are ongoing, and Waterkeeper will include additional violations as information and data become available. Mission Clay is subject to civil penalties for all violations of the Clean Water Act occurring since April 16, 2009.

6. Mission Clay's Certification Lacks the Language Required by the MSGP

For SIC Code 3251, the Mission Clay Facility SWPPP must include a certification that describes "the measures that insure that process waste water resulting from truck washing, mixers, transport buckets, forms or other equipment are discharged in accordance with NPDES requirements." MSGP Section 6E.3.4.

The certification in the Annual Reports just states "I certify under penalty of law that this facility was inspected for non-storm discharges and illicit connections to surface drainages and that there are no illicit connections or discharges to the surface drainage system. Also that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations." The MSGP SWPPP certification requirements are not included in the Mission Clay SWPPP certification.

E. <u>Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program.</u>

Section B(1) and Provision E(3) of the GISWP require facility operators to develop and implement an adequate monitoring and reporting plan ("M&RP") by October 1, 1992, or prior to the commencement of industrial activities at a facility, that meets all of the requirements of the GISWP. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the GISWP's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* GISWP, Section B(2). The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and are evaluated and revised whenever appropriate to ensure compliance with the GISWP. *See* Id. Dischargers must also revise the M&RP to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. Id.; *see also* Section B(4).

Sections B(3) through B(16) of the GISWP set forth the M&RP requirements. Specifically, Section B(3) requires dischargers to conduct quarterly visual observations of all drainage areas within their facility for the presence of authorized and unauthorized non-storm water discharges. Section B(4) requires dischargers to conduct visual observations of storm water discharges during the first hour of discharge of at least one storm event per month during the Wet Season at each discharge point. Sections B(3) and B(4) further require dischargers to document the presence of any floating or suspended material, O&G, discolorations, turbidity, odor, and the source of any pollutants. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. GISWP, Sections B(3) and B(4). Dischargers must also revise the SWPPP to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.*; Section B(4).

Information available to Waterkeeper indicates that the Mission Clay Facility Owners and/or Operators have been conducting operations at the Mission Clay Facility with an inadequately developed, implemented, and/or revised M&RP. For example, in violation of Section B(4), Mission Clay Facility Owners and/or Operators reported in the Visual Observation Forms included with their Annual Reports for the years 2009-2010, 2010-2011, 2011-2012, and 2012-2013 that storm water leaving the facility was "brown" and "muddy" or "brown" and "slightly cloudy," but indicated that no corrective action or SWPPP revision was required.

Information available to Waterkeeper indicates that Mission Clay failed to collect storm water discharge samples from each of the Facility's discharge points, as required by Section B(5) and Section B(7) of the GISWP. For example, while the Mission Clay Annual Report cover sheets for the years 2009-2013 state that the Facility has 3 discharge points, Mission Clay has not sampled discharge point #3 in the past five years and frequently only samples discharge point #1.[13] Mission Clay only sampled discharge points #1 and #2 in the 2008-2009 and 2010-2011 reporting years, and only sampled discharge point #1 in the 2009-2010, 2011-2012, and the 2012-2013 reporting years. Additionally, for the reporting years 2008-2009, 2009-2010, 2010-2011, 2011-2012, and 2012-2013, Mission Clay only sampled one storm event. Furthermore, information available to Waterkeeper indicates that there is an unidentified fourth discharge point at the Mission Clay Facility which has not been sampled during at least the past five years. Finally, information available to Waterkeeper indicates that Mission Clay has not sampled two storm events when there were at least two qualifying storm events each year, nor did Mission Clay sample the first storm event of the wet season. *See* Exhibit B. Mission Clay's failure to collect storm water samples from every discharge location during two storm events, including the first storm event of the wet season, is a violation of Section B(7) of the GISWP.

Section B(5)(c)(ii) of the GISWP requires permitted facility owners and/or operators to sample their storm water discharges for any pollutants that are likely to be present in storm water

[13] The GISWP requires permittees to conduct sampling at all storm water discharge points during two storm events in every Wet Season. The permittee must include the sample results from both storm events in the facility's Annual Report.

discharges in significant quantities. Information available to Waterkeeper, including Mission Clay's own Annual Reports, indicate that significant quantities of heavy metal pollutants, including zinc, copper, lead, aluminum, and iron, are present in the storm water discharges from the Mission Clay Facility because the concentrations of these pollutants exceed the EPA Benchmark limits. Plus, the Mission Clay Facility SWPPP lists metals as a potential pollutant associated with the industrial activities at the Facility. However, while Mission Clay analyzes the storm water samples from the Facility for pH, TSS, SC, O&G, and aluminum, it does not analyze the samples for any other heavy metals, in violation of Section B(5) of the GISWP.

Mission Clay's failure to conduct sampling and monitoring as required by the GISWP demonstrates that it has failed to develop, implement, and/or revise an M&RP that complies with the requirements of Section B and Provision E(3) of the GISWP. Every day that Mission Clay conducts operations in violation of the specific monitoring and reporting requirements of the GISWP, or with an inadequately developed, implemented, and/or revised M&RP, is a separate and distinct violation of the GISWP and the Clean Water Act. Mission Clay has been in daily and continuous violation of the GISWP's M&RP requirements every day. These violations are ongoing, and Waterkeeper will include additional violations as information and data become available. Mission Clay is subject to civil penalties for all violations of the Clean Water Act occurring since April 16, 2009.

F. <u>Failure to Comply with the GISWP's Reporting Requirements.</u>

Section B(14) of the GISWP requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. The GISWP, in relevant part, requires that the Annual Report include the following: 1) a summary of visual observations and sampling results, 2) an evaluation of the visual observation, sampling, and analysis results, and 3) the ACSCE Report. Section B(14). As part of the ACSCE, the facility operator shall review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. *See* GISWP Section A(9). The Annual Report shall be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his/her knowledge. *See* GISWP, Sections B(14), C(9), and C(10).

Mission Clay has a history of failing to comply with the reporting requirements under the GISWP. Mission Clay did not conduct the ACSCE required by section B(14) of the GISWP in 2008-2009, 2009-2010, 2010-2011, or 2011-2012. Only the 2012-2013 Annual Report includes the ACSCE.

Information available to Waterkeeper indicates that Mission Clay has failed to submit Annual Reports that comply with the GISWP reporting requirements. For example, Mission Clay certifies in its Annual Reports that its SWPPP's BMPs address existing potential pollutant sources and that the SWPPP complies with the GISWP, or will otherwise be revised to achieve compliance. However, information available to Waterkeeper, including a review of the Regional Board's files and the Mission Clay Facility storm water sampling data, indicates that Mission Clay's certifications are erroneous.

Mission Clay also failed and continues to fail to provide the explanations required by the Annual Report when there is non-compliance with the GISWP's terms. For example, Mission Clay fails to explain in the Annual Reports why discharges from the Facility have not been analyzed for toxic chemicals and other pollutants that are likely to be present in the storm water discharges in significant quantities, as required by Section B(5)(c)(ii) of the GISWP. Nor has Mission Clay provided an explanation as to why storm water samples were not collected from all discharge points at the Facility during both storm events during the Annual Report years 2010-2011 and 2012-2013, as required by Section B(7) of the GISWP. The explanations given in Annual Report Years 2009-2010 and 2011-2012 were that "one other discharge point is undeveloped and too hazardous to reach" and "outfall 3 was not safe to reach at the time due to the necessity of crossing Temescal Wash", respectively. Section B(8)(a) of the GISWP excuses a facility operator from collecting a sample when there are "dangerous weather conditions, such as flooding or an electrical storm." Regarding the explanation given in 2011-2012, having to cross a creek is not a dangerous weather condition unless the creek is flooding or too deep. To use the excuse in B(8)(a), Mission Clay needs to be more specific as to what conditions made the creek too dangerous to cross. Further, in 2011-2012, the explanation was simply that one of the discharge points was "too hazardous to reach" without explaining why. This is also insufficient to invoke the B(8)(a) excuse. Additionally, Mission Clay failed to explain why additional BMPs were not required after reporting in their Visual Observation Forms that they observed muddy discharges from the Mission Clay Facility during Annual Report years 2009-2010, 2010-2011, 2011-2012, and 2012-2013.

Each of the failures to report discussed above is a violation of the GISWP, and indicates a continuous and ongoing failure to comply with the GISWP's reporting requirements. Every day Mission Clay operates the Mission Clay Facility without reporting as required by the GISWP is a separate and distinct violation of the GISWP and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Mission Clay has been in daily and continuous violation of the GISWP's reporting requirements every day. These violations are ongoing. Mission Clay is subject to civil penalties for all violations of the Clean Water Act occurring since April 16, 2009.

IV. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of up to $32,500 per day per violation for all Clean Water Act violations between March 15, 2004 and January 12, 2009, and $37,500 per day per violation for all Clean Water Act violations after January 12, 2009. In addition to civil penalties, Waterkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Waterkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

V. CONCLUSION

Waterkeeper is willing to discuss effective remedies for the violations described in this Notice Letter. However, upon expiration of the 60-day notice period, Waterkeeper will file a citizen suit under Section 505(a) of the Clean Water Act for Mission Clay's violations of the GISWP. If you wish to pursue settlement discussions please contact Colin Kelly at:

Inland Empire Waterkeeper
ATTN: Colin A. Kelly
3151 Airway Ave., Suite F-110
Costa Mesa, CA 92626
Tel: (714) 850-1965 ext. 307

Sincerely,

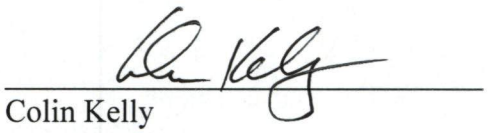

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Exhibit A

1. Sampling Conducted by Waterkeeper Demonstrating Noncompliance with BAT/BCT Standards

Date of Sample	Sample Location	Constituent	EPA Benchmark Limit	Sample Value	Multiple of EPA Benchmark[1]
3/1/2014	Outfall 1	Aluminum	0.75	160	213.3
3/1/2014	Outfall 1	Zinc	0.117	0.97	8.29
3/1/2014	Outfall 1	Iron	1	210	210
3/1/2014	Outfall 1	Total Suspended Solids (TSS)	100	1100	11
3/1/2014	Outfall 1	Copper	0.0636	0.21	3.3
4/1/2014	Outfall 1	Aluminum	0.75	8.9	11.87
4/1/2014	Outfall 1	Zinc	0.117	.310	2.65
4/1/2014	Outfall 1	Iron	1	10	10
4/1/2014	Outfall 1	Total Suspended Solids (TSS)	100	150	1.5

2. Sampling Conducted by Mission Clay Demonstrating Noncompliance with BAT/BCT Standards

Date of Sample	Sample Location	Constituent	EPA Benchmark Limit	Sample Value	Multiple of EPA Benchmark Limit
4/5/2010	Outfall 1	Aluminum	0.75	56.9	75.9
4/5/2010	Outfall 1	Total Suspended Solids	100	2930	29.3
4/5/2010	Outfall 1	pH	6.5-8.5	6.25	
3/21/2011	Outfall 1	Aluminum	0.75	74.3	99.1
3/21/2011	Outfall 1	Total Suspended Solids (TSS)	100	1700	17
3/21/2011	Outfall 2	Aluminum	0.75	28.2	37.6
3/21/2011	Outfall 2	Total Suspended Solids (TSS)	100	968	9.68

[1] The values in the columns in this table and in the subsequent tables were calculated by taking the Sample Value and dividing it by the EPA Benchmark Limit. For example, the first aluminum sample value (taken on 4/5/2010) of 56.9 divided by 0.75 (Benchmark Limit for aluminum) equals 75.9.

Date of Sample	Sample Location	Constituent	EPA Benchmark Limit	Sample Value	Multiple of EPA Benchmark Limit
3/21/2011	Outfall 2	Specific Conductance	200	546	2.73
12/15/2011	Outfall 1	Aluminum	0.75	168	224
12/15/2011	Outfall 1	Total Suspended Solids (TSS)	100	1700	17
12/18/2012	Outfall 1	Aluminum	0.75	160	213.3
12/18/2012	Outfall 1	Total Suspended Solids (TSS)	100	4340	434

3. Sampling Conducted by Mission Clay Demonstrating Noncompliance with Basin Plan Water Quality Standards

Water Quality Standard	Date	Outfall	Visual Observation in Annual Report
"Waste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affects beneficial uses." (Basin Plan 4-10).	2/9/09	1	Discharge was "brown";
	12/7/09	1	Discharge was "brown";
	12/7/09	2	Discharge was "brown";
	1/18/10	1	Discharge was "brown";
	1/18/10	2	Discharge was "brown";
	2/17/10	1	Discharge was "brown";
	4/21/10	1	Discharge was "brown";
	12/16/10	1	Discharge was "brown";
	12/16/10	2	Discharge was "brown";
	1/3/11	1	Discharge was "brown";
	1/3/11	2	Discharge was "brown";
	3/21/11	1	Discharge was "brown";
	3/21/11	2	Discharge was "brown";
	10/5/11	1	Discharge was "brown";
	10/5/11	3	Discharge was "brown";
	11/4/11	1	Discharge was "brown";
	12/12/11	1	Discharge was "brown";
	4/13/12	1	Discharge was "brown";

	4/13/12	2	Discharge was "brown";
	12/18/12	1	Discharge was "brown";
1) "Inland surface waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses as a result of controllable water quality factors." (Basin Plan 4-16); 2) "All inland surface waters of the region shall be free of changes in turbidity which adversely affect beneficial uses." (Basin Plan 4-18); 3) "Waste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses. (Basin Plan 4-11).	2/9/09	1	Discharge was "muddy";
	12/7/09	1	Discharge was "muddy";
	12/7/09	2	Discharge was "muddy";
	1/18/10	1	Discharge was "muddy";
	1/18/10	2	Discharge was "muddy";
	2/17/10	1	Discharge was "muddy";
	4/21/10	1	Discharge was "muddy";
	12/16/10	1	Discharge was "muddy";
	12/16/10	2	Discharge was "muddy";
	1/3/11	1	Discharge was "muddy";
	1/3/11	2	Discharge was "muddy";
	3/21/11	1	Discharge was "muddy";
	3/21/11	2	Discharge was "muddy";
	10/5/11	1	Discharge was "muddy";
	10/5/11	3	Discharge was "muddy";
	11/4/11	1	Discharge was "muddy";
	12/12/11	1	Discharge was "muddy";
	4/13/12	1	Discharge was "muddy";
	4/13/12	2	Discharge was "muddy";
	12/18/12	1	Discharge was "muddy";

Attachment B

Table of Significant Rain Events 2009-2013

	Date	***Inches***
1.	11/28/09	0.28
2.	12/7/09	0.87
3.	12/12/09	1.89
4.	12/13/09	0.12
5.	1/17/10	0.24
6.	1/18/10	1.61
7.	1/19/10	1.06
8.	1/20/10	1.14
9.	1/21/10	2.72
10	1/22/10	1.57
11	1/23/10	0.91
12	1/24/10	0.91
13	1/26/10	0.91
14	1/27/10	0.91
15	1/28/10	0.91
16	2/5/10	0.2
17	2/6/10	1.42
18	2/9/10	0.12
19	2/20/10	0.24
20	2/27/10	1.26
21	3/6/10	0.24
22	4/5/10	0.08
23	4/12/10	0.75
24	4/22/10	0.35
25	10/1/10	0.43
26	10/2/10	4.8
27	10/3/10	4.8
28	10/4/10	4.8
29	10/19/10	0.47
30	10/30/10	0.12
31	12/5/10	0.12
32	12/6/10	0.12
33	12/18/10	0.16
34	12/19/10	1.02
35	12/20/10	4.41
36	12/21/10	2.52
37	12/22/10	4.02
38	12/25/10	0.20
39	12/29/10	0.55
40	1/2/11	0.28
41	1/30/11	0.16
42	2/16/11	0.35
43	2/18/11	0.83
44	2/19/11	0.87
45	2/20/11	0.20
46	2/25/11	0.28
47	2/26/11	1.42
48	3/20/11	1.42
49	3/21/11	0.39
50	3/23/11	0.39
51	3/25/11	0.20
52	4/7/11	0.12
53	4/8/11	0.24
54	4/9/11	0.20
55	5/18/11	0.31
56	10/5/11	0.59
57	11/4/11	0.47
58	11/12/11	0.31
59	11/20/11	0.63
60	12/12/11	0.43
61	1/15/12	0.16
62	1/23/12	0.35
63	1/26/12	0.35
64	2/15/12	0.47
65	2/27/12	0.59
66	3/17/12	1.38
67	3/18/12	0.51
68	3/25/12	0.67
69	3/26/12	0.16
70	4/11/12	0.31
71	4/13/12	0.91
72	4/26/12	0.28
73	10/11/12	0.28
74	11/29/12	0.12
75	12/13/12	0.55
76	12/15/12	0.12
77	12/18/12	0.16
78	12/24/12	0.43
79	12/26/12	0.12
80	12/29/12	0.24
81	12/30/12	0.28
82	1/1/13	1.26
83	1/24/13	0.34
84	1/25/13	0.75
85	1/26/13	0.12
86	1/27/13	0.12
87	2/8/13	0.47
88	2/19/13	0.43
89	3/8/13	0.43